



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1996

Ms. Jennifer D. Soldano
Assistant General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR96-0633

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39757.

The Texas Department of Transportation (the "department") received a request for information relating to "a traffic collision which occurred on Christmas morning of 1995 at the traffic light located at State Highway 175 East and the 600 block of 198 North in Mabank, Texas." You have submitted to this office several documents that are responsive to the request for information. You contend that the documents are excepted from required public disclosure by section 552.103 of the Government Code.¹

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. In Open Records Decision No. 638 (1996) we concluded that a governmental body

¹The requestor also asks for "the name of the company who made the light" located at the intersection where the accident took place. A governmental body must make a good faith effort to relate a request to information which it holds, Open Records Decision No. 561 (1990), but the Open Records Act does not require a governmental body to answer factual questions. Open Records Decision Nos. 555 (1990).


may establish that litigation is reasonably anticipated by representing to this office that a claim letter it has received is in compliance with the notice requirements of the Texas Tort Claims Act (the "TTCA"), Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance.

The department received a notice of claim for personal injuries and property damage resulting from the traffic accident that is referenced in the request for information. You submitted a copy of the notice of claim to us, and you state that the notice of claim was "filed 'under the Texas Tort Claims Act.'" We assume that you are representing to this office that this notice of claim satisfies the requirements of the TTCA. If this assumption is correct, you may withhold the requested documents under section 552.103(a), because under such circumstances the documents relate to reasonably anticipated litigation.

If, however, this assumption is incorrect and you are not representing that the notice of claim complies with the TTCA, then you have not met your burden of showing that litigation is reasonably anticipated for purposes of section 552.103(a). See Open Records Decision No. 638 (1996). If you do not agree with our assumption that the notice of claim complies with the TTCA, then you must release the information at issue to the requestor, because you make no other arguments for exception under section 552.103(a) or any other provision of the Open Records Act.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 39757

Enclosures: Submitted documents

²If in the future you assert that section 552.103(a) is applicable to requested information on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter *complies* with the requirements of the TTCA or applicable municipal ordinance.

cc: Mr. James M. Hurst
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Sundance Square
120 West Third Street, Suite 310
Fort Worth, Texas 76102-7414
(w/o enclosures)